

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1301 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

BHIKHABHAI MAGANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR NM KAPADIA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/08/98

ORAL JUDGEMENT

Heard Ld. advocate appearing for the petitioner.

Ld. counsel relies on the judgment of the Supreme Court of India reported in AIR 1993, S.C. pg. 2127, and the judgment of this Court delivered at the time of deciding Spl.C.A. no. 872 of 1997 (Coram: R.K. Abichandani, J) dated 14-8-97. Petitioner's case is practically identical to the cases referred by Ld. counsel for the

petitioner. I am told that the petitioner is already granted Freedeom Fighters Pension under the scheme referred in the petition, but the same is paid since 1-6-97. The say of the petitioner is that, the same ought to have been granted from the date of application, that is 27th July 1990. In view of the above cited two judgments, rule requires to be issued. Hence Rule.

Ld. AGP Mrs. Talati waives service of the rule.

Ld. AGP submits that, on 27-7-90 the petitioner had not tendered his application along with relevant documents to the Government and despite of several efforts by the State, no such documents were made available and therefore the Government had taken long time in granting the pension under Freedeom Fighters Pension. This contention is replied by the above cited two authorities. I would like to quote the relevant portion of the order passed by this Court in Spl.C.A. No.872 of 1997, which read thus:-

" Para no.2. It is however, directed that petitioner's case for such pension for the past period and payment of arrears should be decided upon within two weeks from the date of receipt of a copy of this order, in he light of the judgment of the Supreme Court in the case of Mukund Lal Bhandari vs. Union of India, reported in A.I.R. 1993 S.C. 2127, in which it was held that whatever be the date on which the claimants make their applications for such freedom fighters' pension, the benefits should be made available to them from the date of entitlement. The petitioner is now considered as entitled to such pension and therefore, has been granted the pension. There is therefore, no reason to deny the petitioner pension from the date on which she became entitled and to pay arrears after allowing the same. "

In view of above, present petitioner also should be made entitled to the pension amount from the date of application, that is from 27th July 1990. Non production or late production of relevant documents cannot be said to be of much relevance, the date of application for such pension is important. The petition is therefore allowed. Rule is made absolute to the extent of prayer para- 10 (A) of the petition. No cost. The respondent State is directed to comply this order in a reasonable period, that is within six months from today. Direct service permitted.

/vgn